

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

JEFFERY A. STALLWORTH

PLAINTIFF

V.

CASE NO. 3:16-CV-00578-HTW-LRA

**EAST METRO CORRIDOR COMMISSION, and
THE MISSISSIPPI TRANSPORTATION COMMISSION**

DEFENDANTS

RESPONSE TO NOTICE OF DISMISSAL

The defendant, the Mississippi Transportation Commission and the Mississippi Department of Transportation, by and through the Office of the Attorney General of the State of Mississippi, files this response to the notice of dismissal (Document 50) filed by the plaintiff, Jeffery Stallworth.

1. On November 7, 2016, subsequent to a telephonic case management conference with Magistrate Judge Linda R. Anderson, the plaintiff submitted a notice of dismissal, purportedly pursuant to Rule 41 of the Federal Rules of Civil Procedure. The notice of dismissal purports and states that this action is dismissed without prejudice against the Mississippi Department of Transportation.

2. This notice is improper pursuant to Rule 41. The language of Rule 41 is clear that a notice of dismissal may not be filed after an answer has been served by an opposing party. FRCP Rule 41 (a)(1)(A)(i). The defendant filed an answer in this case on June 20, 2016 (Document 8).

3. Pending before the Court is the defendant's motion to dismiss, filed August 18, 2016, based upon the lack of standing of the plaintiff and upon the bar of the Eleventh Amendment of the Constitution of the United States (Document 43). Also filed on August 18, 2016, in conjunction with the motion to dismiss, was a memorandum in support of the motion (Document

44). The plaintiff has not yet filed a response to the motion or to the memorandum in support thereof.

WHEREFORE, the defendant, the Mississippi Transportation Commission/Mississippi Department of Transportation, requests that the Court strike and deny the notice of dismissal filed by the plaintiff, Jeffery Stallworth.

Respectfully submitted on this the 10th day of November, 2016.

MISSISSIPPI TRANSPORTATION COMMISSION

JIM HOOD, ATTORNEY GENERAL

/s/ Daniel B. Smith

Daniel B. Smith, MSB No. 7483

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been filed with the Clerk of the Court via the Court's ECF system and thereby served upon all counsel of record who have entered their appearance in this action. I further certify that the foregoing document has been served upon the following person via U. S. Mail properly addressed and postage prepaid.

Jeffery Stallworth
6286 Hanging Moss Rd.
Jackson MS 39206

This the 10th day of November, 2016.

/s/ Daniel B. Smith